



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

October 22, 2013

Ms. Josette Flores
Assistant City Attorney
Office of the City Attorney
City of El Paso
P.O. Box 1890
El Paso, Texas 79950-1890

OR2013-18367

Dear Ms. Flores:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 503086 (Ref. No. W000814-073113).

The City of El Paso (the "city") received a request for information pertaining to animal complaints related to a specified property. You state you have released some information to the requestor. You claim some of the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from public disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. This exception encompasses the informer's privilege, which has long been recognized by Texas courts. *See Aguilar v. State*, 444 S.W.2d 935, 937 (Tex. Crim. App. 1969); *Hawthorne v. State*, 10 S. W.2d 724, 725 (Tex. Crim. App. 1928). The informer's privilege protects from disclosure the identities of persons who report activities over which the governmental body has criminal or quasi-criminal law-enforcement authority, provided the subject of the information does not already know the informer's identity. *See Open Records Decision No. 208 at 1-2 (1978)*. The informer's privilege protects the identities of individuals who report violations of statutes to the police or similar law-enforcement agencies, as well as those who report violations of statutes with civil or criminal penalties to "administrative officials having a duty of inspection or of law

enforcement within their particular spheres.” Open Records Decision No. 279 at 1-2 (1981) (citing 8 John H. Wigmore, *Evidence in Trials at Common Law*, § 2374, at 767 (J. McNaughton rev. ed. 1961)). The report must be of a violation of a criminal or civil statute. See Open Records Decision Nos. 582 at 2 (1990), 515 at 4 (1988). The privilege excepts the informer’s statement only to the extent necessary to protect that informer’s identity. Open Records Decision No. 549 at 5 (1990). However, individuals who provide information in the course of an investigation but do not make the initial report of the violation are not informants for the purposes of claiming the informer’s privilege. We note the informer’s privilege does not apply where the informant’s identity is known to the individual who is the subject of the complaint. See ORD 208 at 1-2.

You assert the submitted information reveals the identity a complainant who reported possible violations of section 42.092 of the Texas Penal Code to the city’s police department or Animal Control personnel, in their capacity as code enforcement officers. You state there is no indication the subject of the complaint knows the identity of the complainant. Based on your representations and our review, we conclude the city may withhold the identifying information of the complainant you have marked under section 552.101 of the Government Code in conjunction with the common-law informer’s privilege. See Open Records Decision No. 156 (1977) (name of person who makes complaint about another individual to city’s animal control division is excepted from disclosure by informer’s privilege so long as information furnished discloses potential violation of state law). The remaining submitted information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General’s Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "Michelle R. Garza", followed by a horizontal line.

Michelle R. Garza
Assistant Attorney General
Open Records Division

MRG/som

Ref: ID# 503086

Enc. Submitted documents

c: Requestor
(w/o enclosures)